

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

DISTRICT 9, INTERNATIONAL )  
ASSOCIATION OF MACHINISTS, et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
GEBCO MACHINE, INC., )  
 )  
Defendant. )

Case No. 4:19-CV-00412 JAR

**MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiffs’ Motion to Vacate Judgment and for Leave to Amend Complaint. (Doc. No. 18). Upon consideration, the motion will be granted.

Plaintiffs filed this action to recover from Defendant Gebco Machine, Inc., delinquent fringe benefit contributions, liquidated damages, attorneys’ fees and court costs pursuant to the Employee Retirement Income Security Act, 29 U.S.C. § 1132(g)(2) (“ERISA”) and Labor Management Relations Act, 29 U.S.C. § 185 (“LMRA”). On July 3, 2019, this Court entered a judgment of default against Gebco Machine, Inc. in the amount of \$144,917.66. (Doc. No. 8).

In support of their motion to vacate the default judgment, Plaintiffs state that while attempting to execute on the judgment, they learned that Gebco Machine, Inc. is not responsible for the delinquent contributions giving rise to the lawsuit. On January 27, 2017, Gebco Machine, Inc. sold its asserts to an entity called “EKAM Industrial Gebco, Inc.” The delinquencies giving rise to this lawsuit occurred after the date of sale. Thus, Gebco Machine, Inc. had no contributory obligation to the benefit funds after January 27, 2017. Plaintiffs state that Edward Kennth Atzert, the principal of EKAM Industrial Gebco, Inc., did not advise them that the name of the entity

responsible for the payment of contributions was no longer Gebco Machine, Inc. Plaintiffs move the Court to vacate the default judgment against Gebco Machine, Inc. and for leave to amend their complaint to name as defendants Edward Kenneth Atzert and/or EKAM Industrial Gebco, Inc.

Because the default judgment in this matter was entered against the wrong party, through no fault of Plaintiffs, the Court will vacate the default judgment entered against Gebco Machine, Inc. and grant Plaintiffs leave to amend their complaint.


Accordingly,

**IT IS HEREBY ORDERED** that Plaintiffs' Motion to Vacate Judgment and for Leave to Amend Complaint [18] is **GRANTED**.

**IT IS FURTHER ORDERED** that the Order and Judgment of Default issued on July 3, 2019 [8] is **VACATED**.

**IT IS FINALLY ORDERED** that within ten (10) days of the date of this Order, Plaintiffs shall file an amended complaint removing Gebco Machine, Inc. as a defendant and naming as defendants Edward Kenneth Atzert and/or EKAM Industrial Gebco, Inc. Plaintiffs are reminded of their obligation to effect timely service on the newly added defendants.

Dated this 23rd day of October, 2019.

  
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**JOHN A. ROSS**  
**UNITED STATES DISTRICT JUDGE**